

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment adds, changes, and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 1, 12 and 19 are currently being amended. Claim 21 has been added. No claims are being cancelled. After amending the claims as set forth above, claims 1-21 are pending in this application.

Priority

In section 1 of the Office Action, the Examiner indicated that Applicant's claim for the benefit of a prior-filed application does not comply with one or more conditions for receiving the benefit of an earlier filing date. The Examiner asserts that provisional application 60/410,282 was filed more than 12 months prior to filing a present application. Applicant respectfully disagrees. Applicant's notification from the OIPE indicates that provisional application 60/410,282 was hand delivered to the USPTO for filing on 9/13/02. The present application was filed within 12 months of that filing date.

35 USC §112 Rejection

In section 3 of the Office Action, the Examiner rejected claim 20 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner objected to the means language in claim 20. Applicants believe that the Examiner intended this rejection to apply to claim 19. Claim 19 has been amended to remove the invoking language. Entry of the amendment and withdrawal of the rejection of claims 20 is respectfully requested.

35 USC §101 Rejection

In Section 5 of the Office Action, the Examiner rejected claims 1-11 under 35 USC §101 stating that the claimed invention is directed to non-statutory subject matter. Claim 1 has been amended to recite a document management system software module producing a functional result and should now be considered to recite statutory subject matter in accordance with MPEP §2106.01. Claims 2-11 depend from claim 1. Consideration of the amendments and withdrawal of the rejections of claims 1-11 under 35 USC §101 is respectfully requested.

35 USC §102 Rejections

In Section 7 of the Office Action, the Examiner rejected claims 1-20 under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,307,262 to Ertel (hereinafter “Ertel”). The Examiner stated that Mitchell discloses “a plurality of medical documents (i.e. cases)” (citing Ertel, col 8, lines 45-52, col 9, lines 25-40) and “an evidence level associated with each of said

plurality of documents ... (i.e. information pertaining to data quality)” (citing Ertel, col 16, lines 20-27).

Claims 1, 12 and 19

Claims 1, 12, and 19 have been amended to recite that the stored documents include protocol information associated therewith, the protocol information including at least one of a diagnosis protocol including a list of symptoms associated with a medical diagnosis and a treatment protocol including one or more medical procedures to be performed. Accordingly, the documents include procedures for a practitioner to use in performing their medical duties.

In contrast, the document referenced in Ertel, as noted by the Examiner, includes patient demographic information, clinical, diagnostic, and procedure codes. This type of information is purely informational and is either valid or not, the validity of the data indicating the data quality. This type of information is neither subject to peer review nor empirical studies. A peer review or an empirical study would not be used to verify the veracity or data quality of information in a patient record as discussed in Ertel. Although the Examiner references peer review in Ertel (citing col 10, lines 46-55), it is important to note that the peer review described therein is related to data quality problems and not a peer review of the quality of the data itself.

Claims 1, 12 and 19 have further been amended to recite an evidence level associated with each of said plurality of documents, said evidence level being a rating metric indicating a confidence level associated with the protocol information, the confidence level based on at least one of a peer review and empirical information. As stated above, the protocol information

includes medical diagnosis protocols and medical treatment protocols. Having this confidence level information is important to practitioners since practitioners face increasingly complex decision making processes, involving increasing volumes and types of information and sources of information, increasing and continuously changing guidelines and requirements, and increasing numbers of medications and methods for treatment. Providing a confident treatment for a diagnosis is also often subject to changing medical viewpoints, new treatments and alternatives to traditional choices. Nothing in Ertel teaches or suggests providing a confidence level that can be used by a practitioner to determine whether to follow a medical diagnosis or treatment protocol.

Ertel does not teach or suggest a confidence level for medical treatment or diagnosis protocol. Further, the information that is provided by Ertel is not provided based on a peer review and/or empirical information. Accordingly, Ertel does not teach each and every limitation of claims 1, 12, and 19. Reconsideration and allowance of these claims is respectfully requested.

Dependent Claims 2-11, 13-18 and 20

Claims 2-11 depend from claim 1 and include all of the limitations thereof. Claims 13-18 depend from claim 12 and include all of the limitations thereof. Claim 20 depends from claim 19 and includes all of the limitations thereof. These claims are allowable for at least the same reasons as the independent claims from which they depend. Reconsideration and allowance of claims 2-11, 13-18, and 20 is respectfully requested.

New Claim 21


Claim 21 has been added. Claim 21 recites evidence level generation software configured to generate an evidence level based on at least one of a peer review and an empirical study query. Claim 21 is believed to be allowable for at least the same reasons as claims 1, 12, and 19.

Conclusion

Applicant believes that the present application is in a condition for allowance. Applicant appreciates consideration of the above remarks and invites the Examiner to telephone the undersigned in the event a telephone discussion would be helpful in advancing the prosecution of the present application. The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-1170.

Respectfully submitted,

September 17, 2008

By 
Michael S. Brayer
Reg. No. 51,495
Attorney for Applicant
BOYLE FREDRICKSON, S.C.
840 N. Plankinton Ave.
Milwaukee WI 53203
(414) 225-6305